

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

IN RE:

GLENN ROYCE FAVRE

DEBTOR.

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CHAPTER 7

CASE NO. 08-85264 - MHM

JUDGE MURPHY

GLENN ROYCE FAVRE,

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PLAINTIFF

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VS.

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AP No. 09-09070 - MHM

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RAY MARTIN,

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DEFENDANT.

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MOTION TO DISMISS

Comes now the above named Defendant, by his attorney, and requests that this Honorable Court dismiss the above style adversary proceeding. For grounds state:

FIRST GROUND

1. Debtor/Plaintiff filed Chapter 7 bankruptcy on December 9, 2008 and received his discharge on April 7, 2009.
2. Any claims that Debtor may have had against the Defendant were prepetition claims that were required to be disclosed in Debtor's petition.
3. Defendant was not listed in the Debtor's petition, and no alleged claim or cause of action against the Defendant was listed in Debtor's petition.
4. Any claims were discharged when the discharge order was entered in the Debtor's main bankruptcy case and the debtor/plaintiff is now judicially estopped from raising this cause of action.

SECOND GROUND

5. Defendant moves for dismissal on the grounds that he was never served with a copy of the complaint.
6. Plaintiff alleges that he served the Defendant by first class mail return receipt requested.
7. Plaintiff's own pleading (court document #6), clearly reflects that the complaint was never served on Defendant and that it was returned by the postal service to the Plaintiff as undelivered.
8. Defendant's first learned of the complaint when he received the motion for default judgment.
9. Since service of the complaint is deficient, Defendant requests the adversary proceeding to be dismissed.

WHEREFORE, Defendant requests that the Honorable Court dismiss the above style adversary proceeding with prejudice and grant such other relief as it may deem just proper.

Dated, this the 16th day of December, 2009.

/s/ Keith Eady
Keith Eady
Attorney for the Defendant
Georgia Bar No. 237038

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I have this day served a true and correct copy of the MOTION TO DISMISS by depositing same in the United States Mail with correct postage addressed to the following:

Glenn Royce Favre
110 South Columbia Drive
#11
Decatur, GA 30030

U.S. Trustee
Suite 362
75 Spring Street
Atlanta, GA 30303

This 16th day of December, 2009.

/s/ Keith Eady
Keith Eady
Attorney for the Defendant
Georgia Bar No. 237038

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